

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
HEALTH INSURANCE & LONG TERM CARE ISSUES COMMITTEE  
INTERIM COMMITTEE MEETING – MAY 19, 2023  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Health Insurance & Long Term Care Issues Committee held an interim meeting via Zoom on Friday, May 19, 2023 at 12:00 P.M. (EST)

Delegate Steve Westfall of West Virginia, Chair of the Committee, presided.

Other members of the Committee present were:

Asm. Tim Grayson (CA)	Asw. Pam Hunter (PA)
Rep. Rod Furniss (ID)	Sen. George Lang (OH)
Rep. Matt Lehman (IN)	
Rep. Deanna Gordon (KY)	
Sen. Robert Mills (LA)	

Other legislators present were:

Rep. Dafna Michaelson Jenet (CO)	Rep. My-Linh Thai (WA)
Rep. Rita Mayfield (IL)	Del. Walter Hall (WV)
Sen. Jeff Barta (ND)	
Asm. David Weprin (NY)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Will Melofchik, NCOIL General Counsel  
Pat Gilbert, Manager, Administration & Member Services, NCOIL Support Services, LLC

#### QUORUM

Upon a Motion made by Rep. Matt Lehman (IN), NCOIL Immediate Past President, and seconded by Asw. Pam Hunter (NY), NCOIL Treasurer, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

#### INTRODUCTORY REMARKS: CHAIR WESTFALL

Del. Westfall thanked everyone for joining the meeting and stated that the purpose of the meeting is for the Committee to continue discussion on the NCOIL Biomarker Testing Insurance Coverage Model Act (Model), sponsored by Asw. Hunter and co-sponsored by Sen. Paul Utke (MN), NCOIL Secretary. The Committee will be voting on the Model during the NCOIL Summer Meeting in July, so this meeting is primarily an opportunity to discuss the specific comments and suggested revisions to the Model that have been submitted thus far. The Committee's meeting in July will be reserved only for brief comments and then a vote, so I really do urge everyone to speak up today and not wait until July as the Committee will have other business to work on at that meeting. Since the time of announcing this interim meeting, we have received two letters with specific comments on the Model, as well as a letter in general support of the Model. The letters

with specific comments were submitted by the Blue Cross Blue Shield Association (BCBSA), and America's Health Insurance Plans (AHIP). The general letter in support was submitted by a large coalition of organizations. All of that information, as well as prior committee minutes and prior letters are on the NCOIL website page for this meeting.

## CONTINUED DISCUSSION ON NCOIL BIOMARKER TESTING INSURANCE COVERAGE MODEL ACT

Asw. Hunter thanked Del. Westfall for calling this meeting today in order to further discuss this important Model. I'm looking forward to hearing comments from everyone today, and voting on the Model in July. I think this Model is a great opportunity for NCOIL to be involved in what can be truly described as a groundswell of support for this very important issue. Legislation very similar to the Model has been enacted in 9 states, and it has been introduced in 12 other states, including my home state of New York. And just as a point of reference, just this past week we had our insurance committee meeting in NY and this Model passed through with bipartisan support, unanimously. This is not a blue state-red state issue, this is a consumer issue. When something reaches this many states, it can't be dismissed as something only a few or a handful of states are entertaining. Rather, this needs to be recognized and described as truly an emerging trend in healthcare public policy.

One thing I would like to mention again is that the Model is really focused and intended to deal only with biomarker testing post-diagnosis – you have been diagnosed with cancer and then the option for biomarker testing is then introduced and it's used to determine the most effective treatment options. We're not talking about just having testing, and having that testing covered by insurance, at any time. I want to make that very clear – this is after someone has been diagnosed with cancer. So if biomarker testing should be and can be required based on the type of cancer that's been diagnosed, this should be an option. Accordingly, enactment of this legislation in states should theoretically save money because remember we had conversations on this before with breast cancer screening and colonoscopy and prostate screenings about how it's going to cost so much money and we can't do it and then now everyone is doing it across the country and it's saving lives and saving money as a preventive measure. This is again post diagnosis but we want to make sure we are saving lives using the best treatment options that we have available based on the specific targeted type of cancer that you have.

I am certainly open to making changes to the Model, and we've been having this conversation for a year and the only opposition received is from health plans which is not surprising. We have received limited comments from my colleagues the past year but we wanted to have this meeting well in advance of the 30 day materials for the Summer Meeting to provide everyone with another opportunity to provide additional information or questions or concerns so you can bring them forward and close this chapter on this Model so everyone can bring it back to your states and I don't know if Rep. Tom Oliverson, M.D. (TX), NCOIL Vice President, is here today but I believe this passed in Texas last week.

Del. Westfall stated that we'll now move to discussing the Model. In terms of format, we'll hear from interested persons first and then hear from legislators. If you have already submitted a letter, please do not repeat what is in the letter. Please either

supplement the letter or address something in a letter submitted by someone else. Any interested persons that would like to make any comments, please feel free to jump in and say your name and who you are representing. We also have the “raise your hand” function available on Zoom that staff is monitoring.

Hilary Gee Goeckner, Director of State & Local Campaigns, Access to Care, at the American Cancer Society, thanked the Committee for the opportunity to speak and thanked Asw. Hunter for her leadership on this important issue and urged the Committee’s support on the Model. I’ll make some comments in response to the opposition letters that were submitted. As a reminder, biomarker testing is all about connecting patients with the most effective treatment for their conditions. As Asw. Hunter noted, there is broad bipartisan support across the country for this. Some breaking news this morning - in addition to the states mentioned by Asw. Hunter, Oklahoma’s bill just passed within the past hour and is on the way to the Governor’s desk so this is now law in AR, AZ, IL, KY, LA, MD, NM and RI. So there is really broad bipartisan support and it is an exciting issue that states are getting legislation on the books on so that more patients can benefit. There are very real coverage gaps currently in both public and private insurance plans. Although most plans are covering some biomarker testing for some patients, many patients that can benefit are missing out on the testing needed to make sure they have the right treatment plan. So what this legislation does is level the playing field so that more plans are playing by the same rules because they are not all routinely covering necessary and appropriate and really standard of care tests. One example is a paper I referenced in my letter that analyzed plans in every single state and compared those written policies for coverage of biomarker testing only looking for testing in advanced non-small cell lung cancer, breast cancer, melanoma, and prostate so these are really proven tests with many targeted treatments available, these aren’t particularly new or unproven or unjustified tests and 71% of policies reviewed are more restrictive than those gold standard guidelines that every oncologist consults in determining whether to order biomarker testing.

As Asw. Hunter noted, this legislation has very clear guardrails – this isn’t any test under the sun that calls itself a biomarker test that has to be covered. There are clear circumstances under which testing should be covered and also sources of evidence that must be met in order for a test to qualify. The circumstances are diagnosis, treatment, ongoing monitoring of a disease or condition, and also those sources of evidence must be met – rigorous scientific and medical evidence - to ensure tests are covered only when effective and providing useful information to inform the treatment of patients and really shape their treatment decisions. Timely access to guideline indicated biomarker testing can help achieve the triple A that everyone’s always after – better health outcomes, improved quality of life, and reduced healthcare costs by avoiding unnecessary or ineffective treatments. For example, some breast cancer patients might not get any benefit from years of hormone therapy but would also have a lot of side effects and an impact on quality of life. Some prostate cancer patients might actually choose to forgo surgery that can often cause really devastating impacts on quality of life for a really non-aggressive slow growing cancer that wont actually cause them to die any sooner so having that information is really valuable to patients and their doctors to determine what the best most personalized treatment plan is for a particular patient. This language has been thoroughly vetted and received bipartisan support in 11 states and counting as of this morning and endorsed by more than 50 patient and provider groups some of which have signed the letter that you have in your packet for today. We urge your support for this state driven evidence based policy.

Patrick Plues, Vice President of State Government Affairs for Biotechnology Innovation Organization (BIO) thanked the Committee for the opportunity to speak and thanked Asw. Hunter for bringing this before NCOIL, and thanked NCOIL for taking up this legislation. Many of BIO's member companies research, manufacture and develop biopharmaceuticals that are more efficiently and more effectively used in combination with biomarker testing. BIO fully supports the biomarker testing legislation under consideration and we applaud the efforts by the American Cancer Society to pass this state legislation requiring health plans and Medicaid programs to cover biomarker testing. Continued advances in science and genomics are driving increased understanding of the human physiology and how diseases in the human body might work. As more biomarkers are identified they have the power to greatly improve how we treat patients by providing researchers with new ways to measure disease activity, shortening the amount of time that is required to demonstrate therapy is providing benefit to the patient, allowing researchers to better understand how effective a treatment is against a disease. Biomarker testing also allows for more efficient care delivery which often means cost savings.

By spending a little bit more upfront on testing, we can often find out if certain treatments will or will not work so the payers don't foot the bill for the treatment and it's not a waste of time for the physician or patient. Biomarker testing also allows doctors to identify patients at low risk of disease progression who don't need additional treatment or won't benefit from expensive therapies and allowing them to avoid this care altogether. This Model as mentioned levels the playing field so that various plans follow the same rules. And I'd also like to add that BIO also represents a number of manufacturers in the rare disease space that are outside of cancer and there are applications of biomarker testing in the rare disease space. On average it takes between five and seven years to accurately diagnose but also treat a patient and in the rare disease space which are often degenerative diseases the longer you wait to find a treatment the more irreversible damage you give to a rare disease patient.

Randi Chapman, Managing Director of State Relations for BCBSA, stated that I really appreciate the opportunity to speak before you all today and certainly understand the importance of this issue both to NCOIL and as well as to our members, those 115 million people that BCBS companies serve. We always want to ensure that our members are able to access the care that they need in the most affordable way that they can. In listening to the testimony over the past couple of meetings and certainly the words of Asw. Hunter, I wanted to respectfully suggest that in the language in the Model that refers to coverage to biomarker testing for the purposes of "diagnosis, treatment, appropriate management, or ongoing monitoring of a covered person's diseases or condition" - I would suggest perhaps removing "diagnosis" and even perhaps put in "post-cancer diagnosis" as it seems to me that would be clearer in terms of getting to the goal that Asw. Hunter states for the Model in terms of coverage parameters. I know we put in our letter and don't want to repeat anything but I just wanted to add that for the committee's consideration.

Miranda Motter, Senior VP of State Affairs at AHIP thanked the Committee for the opportunity to speak and for the opportunity to engage with this Committee and members of NCOIL over the past year and a half on this issue. We specifically appreciate the opportunity to present on this topic and we recently submitted a letter on May 11 in advance of this call and I know you all have that. In our letter I'll just quickly

point out two things – we thought it was important to highlight the testimony that the committee received from purchasers of healthcare. During the past year and a half the committee did hear from employers that are purchasing biomarker testing today and the committee also heard from California and their employee benefit plan and Medicaid plan relative to the biomarker testing that they are purchasing today. We wanted to highlight those two points as it relates to those purchasers of healthcare, not just health plans but those who are actually purchasing biomarker testing today. And again the two points I would make is that you've heard testimony that health insurance plans already do offer and purchasers of health insurance coverage including employers and states are already purchasing biomarker testing coverage when that testing is clinically valid and it provides clinical utility. The second thing I'd emphasize is that you've heard employers and purchasers of healthcare including your own state Medicaid programs that they are concerned about the rising cost of healthcare and health insurance and we really do believe that with some of the more expansive definitions in the Model that it could lead to expensive and unnecessary cost and additional cost for those employers and employees and you did hear testimony to that effect from the ERISA Industry Committee (ERIC) just a few months ago. In addition, BCBSA in their letter noted a fiscal note relative to the pending biomarker testing mandate in Ohio that does talk about the additional testing cost that the state legislature will have to allocate funds for and taxpayers will have to pay for. As a result of the testimony that you've all heard we really just believe that action at this time by NCOIL isn't needed so we respectfully request a no vote during the upcoming meeting in July.

Ms. Goeckner stated that she would just like to offer a few additional comments about the purposes of "diagnosis" in the Model. Biomarker testing is largely referred to as diagnostic testing and this is separate and distinct from a screening test for a general population. So you might have genetic testing if someone in your family is diagnosed with cancer, or a mammogram is a screening test that generally everyone goes for. But a diagnostic test is really helping to subtype a diagnosis and narrow down so Mr. Plues was talking about rare disease diagnosis – this isn't something where everybody walking down the street is going to go get a diagnostic test to see if they might have something. This is something that is under a doctor's care for a treatment or condition and accurately diagnosing that in order to determine the best course of treatment so I would say diagnosis is an extremely important situation for when this testing is appropriate and then also as Mr. Plues touched on there are applications outside of cancer. Naturally, I work for the American Cancer Society so that's our focus but there is lots of exciting work going on in other disease areas and as you'll see the coalition that is supporting this legislation represents many different disease groups like rare disease and autoimmune diseases like arthritis and rheumatoid arthritis. Just today the U.S. Food and Drug Administration (FDA) approved a biomarker test for preeclampsia. Among women who have preeclampsia, about one third respond to a particular treatment and so knowing head of time before you give a pregnant women a presumably very expensive treatment that could cure her preeclampsia you want to know if she is one of the 1 in 3 women who will have an effective response to that or is it not going to do any good to her or her baby to give that particular treatment. I would encourage you all to keep diagnosis in as all of the 11 states have done so to date.

Sen. George Lang (OH) stated that I appreciate Asw. Hunter's intent in bringing this legislation forward and I was diagnosed with stage four colon cancer and it ended up being an advanced form of stage three so I am a survivor and I appreciate the intent of this but I am strongly opposed to this bill and what this bill does. This essentially to me

comes down to government interfering with the private sector and with private markets. We should not be telling health plans what they should or should not do. I think it's a good idea to offer this and will ultimately drive down costs but the health plans that want to offer it can price it into their plan and compete against those plans that do not want to offer this. Another big concern I have is that this only affects the little guys – those companies that are the heart and soul of every one of our communities. If you are a large self-funded plan you come under the Employee Retirement Income and Security Act of 1974 (ERISA) and what we pass at the state level will have no impact on them so this will only potentially increase costs to the small guys and they are struggling right now to survive with supply chain issues and inflation issues and workforce development issues and for most businesses, not all, but for most, employee benefits are their second highest cost. I don't want to put this burden on small businesses and I've heard some testimony today that this will help level the playing field against various plans by making sure that everybody is playing by the same rules - that's not the government's job. That is the free market's job. They will have winners and loser as a result of what they put forward. Health plans will enjoy the results of good decisions or suffer the consequences of bad decisions and if there is an advantage for this in the market which I believe there is, employers can use this to their advantage as well when it comes to recruiting employees. I believe over time the private sector is going to handle this and it doesn't require government intervention and if it really will lower costs and I think long term it will then the private sector is going to naturally do this on their own because they want to lower costs as well. Thank you for bringing this forward and I stand in opposition.

Rep. Dafna Michaelson Jenet (CO) stated that I carried this bill in CO and it made it through committee but didn't make the final steps but it was fully bipartisan and it was almost unanimous out of committee and I believe very strongly in the concepts behind this bill regarding a focus on saving people money on healthcare. I am a two time cancer survivor and I will tell you that being able to find the right treatment as opposed to trying this and trying that and seeing what sticks is very much an efficiency and an efficiency model that I would like to see adopted in our insurance plans. I understand that it's not going to be the ERISA funded plans that are covering this but we can start somewhere and the quality of life for the Coloradoans that will benefit from this biomarker bill when it does pass and get to the Governor is very much worth the effort of going forward with this bill.

Rep. My-Linh Thai (WA) thanked the Committee and stated that I am a trained pharmacist so I am going to speak in support of this proposed legislation. Washington, similar to Colorado, has been working on this legislation and we have heard testimony similar to what this committee has heard. At the same time, as a healthcare provider I am sharing with you that perspective. As a healthcare provider when we see incredible advances coming to medicine and technology that could not only save lives but interfere with the decision making between the physicians, providers and patients sooner it saves the government money but also patients money so we look at multiple different directions for why a piece of policy being introduced is not only about efficiency but about safety and efficacy and when we look at safety and efficiency just imagine medication is currently available for treatment for any type of cancer or any type or rare disease. As a pharmacist I will tell you that not every single medication is completely safe and so if we only sort of experiment in medications for treatment for people who are trying to take care of their loved ones, biomarker testing is a game changer. It is making sure that the medication that is available for that particular condition is a match so we're

not playing games with people's lives. We are actually treating people using data and information that is now available to us. In the past it wasn't available for providers or patients and so why aren't we using what is available to provide the best healthcare options possible for our patients. I not only endorse this proposal but really call big and small and government and private insurers to really be looking at this potential life changing testing so that we all share the same underlying mission to providing the best outcomes and services for our patients and our clients.

Rep. Lehman thanked the committee and Asw. Hunter and stated that I kind of echo a little bit of what Sen. Lang said. I'm very concerned on the front half of this regarding the model applying only to post diagnosis. The industry people I've talked to have said if I can take someone who has been diagnosed and put them on the right path for treatment, long term it might actually be cheaper. I've been an insurance agent for 30 years and I don't do health insurance anymore but when I did years ago carriers were not big on paying for preventive care and now they do because they see the benefit of getting people healthy and the utilization goes down. If we can get people on the right process and get utilization down post diagnosis that's a positive. I have concerns pre diagnosis and I don't think health plans should be in the position to do that. The other thing I'll agree with Sen. Lang on is with the bigger picture here and I know NCOIL has been pushing it and it's that we've got to start cracking the nut that is ERISA. These are state run plans and we can't touch these plans because of ERISA but what drives people to ERISA is the cost of care. I just talked to a large group the other day of about 100 people who said we've been fully insured for awhile but we just went self insured. They immediately switched from being regulated and taken care of by things we do at the state level to now going to the federal level and ERISA is doing nothing. I really think there are two things at play here - we've got to make sure we narrow it to post diagnosis and then continue discussion of health plans being brought back to the states for control. Those are my thoughts and I'd like to see this keep moving forward but I do think that if it's not clear we need to make it very clear that it is post diagnosis.

Sen. Lang stated that I do believe that this will lower costs and I do believe that the private sector has a stronger interest in lower costs than the public sector especially in this scenario because they are the ones ultimately responsible for paying for it and I appreciate everyone's comments today but my position is still the same. I think it's a noble effort and as a survivor I get it and just to furtherer illustrate my position on this I am totally deaf and rely on two cochlear bone attached hearing aides in order to hear as well as my ability to read lips and when a hearing aid association came to me to force private insurers to supply hearing aids for kids it's a great idea and I'd like to see every private insurance company do that and since I'm the only deaf legislator in OH the thought I'd be their guy and I had to tell them not only will I not move it forward but if it moves forward I will strongly oppose because I think in general government should not be interfering with private markets.

Asm. David Weprin (NY) thanked the Committee for the opportunity to participate and stated that I'm the new Chair of the NY Assembly insurance committee and we just passed Asw. Hunter's bill out of committee a couple of days ago so we're looking to close down session and this is something we'd like to see happen in NY.

Asw. Hunter thanked everyone for their comments and stated that she'd just like to mention again that this model is meant to deal only with biomarker testing post diagnosis. I want to reiterate that and I feel it's important to say, and I absolutely

understand the free market and allowing private businesses to grow and thrive but when they fail to meet the needs of our constituency then it is incumbent upon government to step in to make sure that all of its people are taken care of and that is what we're trying to do with this model. There are big healthcare disparities and we've talked about them for as long as I've been at NCOIL whether it be in states that don't opt in fully to Medicaid to where people live and their zip codes. This is leveling the playing field for people to be able to get the treatment based on the cancer that they have been diagnosed with. My mother has died from cancer and my husband has had cancer and both my sisters have had cancer and maybe you don't have a unique form of breast cancer or maybe radiation and chemotherapy is for you but you're talking about filling peoples bodies with deadly chemicals when maybe they are not necessary when simply using a biomarker test after you have been diagnosed with cancer could save your life and give you meaningful quality of life going forward. To me this is a no brainer and to me it's incumbent upon us to make sure we're taking care of all of our constituency and not just businesses and making sure we push back sometimes. Sometimes we agree with the plans and sometimes we don't and sometimes it's incumbent upon us to push that forward if we feel that the needs of our constituents are definitely not being met. I look forward to having this conversation in July in Minnesota and look forward to the model being passed and you can take it back to your states.

Del. Westfall thanked everyone for their comments and stated that any comments or thoughts or suggestions should be submitted to him, Asw. Hunter, Sen. Utke, or NCOIL staff.

#### ANY OTHER BUSINESS

Del. Westfall stated that there is one last piece of business before we adjourn. As you likely know, registration for the NCOIL Summer Meeting in Minneapolis is open. If you haven't registered, please do so. Also, as a reminder, on the first day of the meeting, we'll be holding another golf outing to benefit the Insurance Legislators Foundation Scholarship Fund. If you haven't yet registered, please do so before it sells out. You can find all meeting and golf registration information on the NCOIL website or by reaching out to NCOIL staff.

#### ADJOURNMENT

Heating no further business, upon a Motion made by Rep. Lehman and seconded by Asw. Hunter, the Committee adjourned at 12:45 p.m.